

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1497 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HANIFBHAI ALIAS DENI RASULKHANKALAL MUSALMAN (SHAIKH)

Versus

DISTRICT MAGISTRATE MEHSANA

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Appearance:

MR ANIL S DAVE for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/11/1999

#### ORAL JUDGEMENT

1. The petitioner was detained by an order passed by the District Magistrate, Mehsana on 16th February 1999 under the provisions of the Gujarat Prevention of Anti Social Activities, 1985 [hereinafter referred to as 'the PASA Act' for short]. The detaining authority, in grounds of detention, recorded that six offences under the Prohibition Act were registered against the petitioner. That the authority considered the statements

of two witnesses who alleged that, on 21/12/98 and 17/12/98, the petitioner was found by them to have been involved in bootlegging activities and in using force in a manner which sent a feeling of fear into the people at large and whereby, the public order was disturbed. After considering other relevant aspects, the detaining authority came to a subjective satisfaction that detention under the PASA Act was the only remedy which can be resorted to for immediately preventing the petitioner from pursuing his illegal activities.

2. The petitioner had requested for copy of the chemical analyzer's report in respect of the cases for which he is booked and which was relied upon by the detaining authority.

3. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India challenging the order of detention on various grounds. One of the grounds is that the petitioner in representation dated 21st February 1999, had requested the detaining authority to furnish copy of the report of chemical analyzer, Forensic Science Laboratory and statements of other witnesses which were recorded at the time of investigation, but the same have not been supplied to the petitioner. It is contended that this has deprived the petitioner of making an effective representation guaranteed under the Constitution of India.

4. Mr. Dave, learned Advocate appearing for the petitioner has restricted his arguments on the above grounds alone to substantiate his argument that the order of detention is bad in law. He placed reliance on decision of this Court in Special Civil Application No.10687/98 decided on 9th August 1999 [Coram : R.M.Doshit, J.] in the case between Ambalal Chhaganlal Raval v/s Commissioner of Police, Ahmedabad and others and the decision in the case of Amarsinh Chaturbhuji v/s Commissioner of Police, Ahmedabad in Special criminal Application No. 1633/93 decided on 26th July 1994k.

5. Mr.D.P.Joshi, learned AGP opposed this petition. He submitted that the detaining authority has considered all relevant aspects and then passed the order of detention and no prejudice is caused to the petitioner. He however conceded to the factual aspect of non-supply of the documents demanded by the petitioner in the representation.

6. The undisputed fact that emerges is that, after

the detention, the petitioner requested for certain documents relied upon by the detaining authority for making an effective representation. The documents have not been supplied to the detenue till date. The continued detention therefore would be rendered illegal for the reason that the detenue has been deprived of making an effective representation because of non-supply of documents demanded by the petitioner. This court in the decisions relied upon by the learned advocate for the petitioner has taken the same view and in that view of the matter, the petition deserves to be allowed on this ground.

7. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Mehsana on 16th of February, 1999 in respect of the petitioner Hanifbhai alias Deni Rasulkhan Kalal Musalman [Shaikh], is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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